

McLACHLAN, RISSMAN & DOLL
COUNSELORS AT LAW

DONALD J. McLACHLAN (1937-1992)
THOMAS W. RISSMAN
JOHN H. DOLL
DEBORA J. CHOATE

6 W. HUBBARD STREET
SUITE 500
CHICAGO, ILLINOIS 60610
312-527-2300
TELECOPIER: 312-527-2023

September 29, 1994

19006

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SEP 30 1994 - 11:02 AM

INTERSTATE COMMERCE COMMISSION

LICENSING DIVISION

SEP 30 11 02 AM

Mr. Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation in your office pursuant to the provisions of 49 U.S.C. §11303 are two original counterparts of a Locomotive Lease Agreement ("Lease Agreement") dated as of September 15, 1994, a primary document as defined in Interstate Commerce Commission's Rules for the Recordation of Documents, 49 CFR §1177.

The names and addresses of the parties to the enclosed documents are as follows:

Lessor:	Wheeling & Lake Erie Railway Company 100 East First Street Brewster, Ohio 44613
Lessee:	Electro Motive Division General Motors Corporation 9301 West 55th Street Dept. #785 La Grange, Illinois 60525


The property covered by the enclosed Lease Agreement includes the railroad equipment identified in Schedule I attached to the Lease Agreement being transmitted by this letter.

Also enclosed is a check in the amount of \$18 payable to the order of the Interstate Commerce Commission covering the recordation fee.

A short summary of the enclosed primary document to appear in the Interstate Commerce Commission's files is as follows:

Locomotive Lease Agreement dated as of September 15, 1994 between the Wheeling & Lake Erie Railway Company, lessor, and Electro Motive Division of General Motors Corporation, lessee, covering seven (7) EMD SD45 locomotives bearing road numbers WC 1701, 1718, 1724, 1744, 1745, 1746 and WC 9093.

McLACHLAN, RISSMAN & DOLL

By 

cc: William Callison
Richard Marchese

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

9/30/94

OFFICE OF THE SECRETARY

McLachlan, Rissman & Doll
6 W. Hubbard Street, Ste. 800
Chicago, Illinois 60610

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/30/94 at 11:05AM, and assigned recordation number(s). 19006.

Sincerely yours,

Vernon A. Williams
Acting Secretary

Enclosure(s)

\$ 18.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

Janice M. Fort

19006
SEP 30 1994 11 05 AM
INTERNATIONAL UNION OF RAILROADS
LOCOMOTIVE LEASE AGREEMENT

This Locomotive Lease Agreement (as amended or supplemented from time to time, the "Agreement") is made as of this 15th day of September, 1994 by and between the WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation ("Owner"), and the ELECTRO MOTIVE DIVISION OF GENERAL MOTORS CORPORATION ("Lessee"). Owner and Lessee agree as follows:

1. LEASE, ACCEPTANCE AND DELIVERY OF THE LOCOMOTIVES.

(a) On the terms and subject to the conditions contained in this Agreement, Owner leases to Lessee and Lessee leases from Owner the locomotives identified on *Schedule I* attached to this Agreement (the locomotives shall be referred to in this Agreement individually as a "Locomotive" or a "Unit" and collectively as the "Locomotives" or the "Units").

(b) Owner will deliver each Locomotive in good order and repair and in compliance with applicable rules and regulations of the Federal Railroad Administration ("FRA") and the Association of American Railroads ("AAR"), except as specified in *Schedule II* attached to this Agreement. Owner agrees to make the repairs and replacements described on *Schedule II* in accordance with the terms of *Schedule II*.

(c) Each of the Locomotives will be delivered to Lessee as of the date specified in attached *Schedule I* at a point of interchange on Owner's lines (FOB Ohio) as agreed to in writing by Owner and Lessee. Lessee will inspect each of the Locomotives at the location and on the dates set forth on attached *Schedule III*. Upon inspection and delivery of the Locomotives to Lessee, Lessee will execute and deliver to Owner a Certificate of Acceptance, in substantially the form attached to this Agreement as *Exhibit A*.

2. RENTAL PAYMENTS.

(a) Lessee agrees to pay to Owner, during the lease term for each Locomotive, as rent for the Locomotive, the amount per day for such Locomotive set forth on attached *Schedule I*. Rent shall be payable in advance on the first day of each month during the lease term for the Unit; provided, however, that, with respect to any Unit delivered on a date other than the first day of a calendar month, rent for the first (partial) month shall be payable in advance on the delivery date. If the first day of any month during the term of this Agreement is not a business day, the rent otherwise payable on such date shall be payable on the immediately following business day.

(b) Except as otherwise requested by Owner, all rent and other payments to be made under this Agreement shall be made by wire transfer of immediately available funds to a bank account or accounts specified in writing by Owner.

(c) If any rent or other amount due under this Agreement is not paid within ten (10) calendar days of its due date, Lessee shall pay Owner interest on the overdue amount from the date due until paid at the lesser of (i) the corporate base rate announced from time to time by The First National Bank of Chicago, which rate shall change as and when the base rate changes, or (ii) the maximum permissible legal rate of interest.

(d) This Agreement is a net lease, and Lessee's obligation to pay all rent and other amounts as they become due is unconditional. Lessee is not entitled to abate or reduce any rent or other amounts due under this Agreement, or to set-off any charges against those amounts for any reason. Lessee is not entitled to recoupments, crossclaims, counterclaims or any other defenses to the payment of rent or other amounts due under this Agreement. Lessee's obligation to pay all rent and other amounts due under this Agreement shall not terminate for any reason except the termination of this Agreement in accordance with its express terms.

3. TERM OF AGREEMENT.

Each Locomotive shall be subject to lease under the terms of this Agreement for the period commencing with the delivery date of the Unit in accordance with Section 1(c) above and shall continue for a period of 365 days from the delivery date. The delivery date, with respect to each Locomotive, will be the date of acceptance by Lessee, as set forth on the Certificate of Acceptance for the Unit.

4. ACKNOWLEDGEMENT OF SECURITY INTERESTS.

(a) Lessee acknowledges that the Locomotives are subject to (i) a first priority security interest granted by Owner in favor of The Oxford Group, Inc., an Illinois corporation ("Oxford"), pursuant to a Security Agreement (Equipment Mortgage and Assignment of Leases) dated July 21, 1992 (the "Oxford Security Agreement") and (ii) a second priority security interest of the Bank of America National Trust and Savings Association, as agent for the banks party to that certain Credit Agreement dated as of May 17, 1990, as amended, supplemented, restated or otherwise modified from time to time (the "Agent"), pursuant to a Collateral Assignment of Equipment Lease and Rolling Stock Security Agreement dated as of May 17, 1990 by Owner in favor of the Agent and pursuant to a Security Agreement dated as of May 17, 1990 by Owner in favor of the Agent (together, the "Agent Security Agreements"). Lessee further acknowledges that this Agreement is subject to (1) a first priority pledge in favor of Oxford, together with an assignment of Owner's rights under this Agreement (including the right to receive payment of rent and other amounts that shall become due and payable under this Agreement), and (2) a second priority pledge in favor of the Agent, together with an assignment of Owner's rights under this Agreement (including the right to receive payment of rent and other amounts that shall become due and payable under this Agreement). Oxford and Agent are referred to in this Agreement individually as a "Secured Party" or together as the "Secured Parties."

(b) In order to reflect the Secured Parties' respective security interests and other rights in and to the Locomotives and this Lease, Lessee shall keep and maintain (at Lessee's expense), at all times, plainly and conspicuously marked on each Unit, in letters not less than one inch in height, the following:

**"OWNERSHIP SUBJECT TO SECURITY
AGREEMENTS FILED WITH THE INTERSTATE
COMMERCE COMMISSION"**

or other words to that effect reasonably requested by either of the Secured Parties. Lessee shall promptly replace any stenciling required by this Section that may be defaced or removed.

(c) Upon written notice to Lessee of Oxford's enforcement of its rights under the Oxford Security Agreement to receive payments under this pledged Lease as a result of a default by Owner under the Oxford Security Agreement, Lessee shall pay all rent and other payments that shall become due and payable under this Agreement directly to Oxford at the bank account or accounts specified in writing by Oxford.

5. MARKING OF EQUIPMENT.

(a) The Lessee will cause each Locomotive to be kept numbered with the road numbers set forth in attached *Schedule I*. Lessee shall not during the term of this Agreement change the road number of any Locomotive unless and until it has taken the following actions: (i) Lessee shall furnish to Owner and each Secured Party, at least thirty (30) days in advance of the change, a supplement to this Agreement (containing a statement of the new road numbers), in form and substance reasonably satisfactory to Owner and each Secured Party; (ii) Lessee shall furnish to Owner and each Secured Party, in advance of the change, evidence that such supplement has been filed, recorded or deposited in all public offices where this Agreement has been filed, recorded or deposited; and (iii) Lessee shall take such other action that may be reasonably requested by Owner or either of Secured Parties to protect their respective interests in the Locomotives and this Lease.

(b) In addition to the markings required by Section 4 above, Lessee shall keep and maintain (at Lessee's expense) at all times during the term of this Lease, plainly and conspicuously marked on each Unit, in letters not less than one inch in height, the following:

**"LEASED FROM A CORPORATION AS FILED WITH
THE INTERSTATE COMMERCE COMMISSION"**

or other appropriate markings reasonably designated by Owner from time to time in order to protect Owner's title to the Locomotives and its rights under this Lease. Lessee shall promptly replace any stenciling required by this Section that may be defaced or removed.

(c) During the term of this Agreement, Lessee will not permit a designation to be placed on a Unit which might be interpreted as indicating a claim of ownership adverse to that of the Owner (or any assignee of Owner); provided, however, that a Unit may be lettered with names, initials or other insignia customarily used by Lessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Unit.

6. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.

OWNER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE UNITS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO (I) THE DESIGN, QUALITY, OPERATION OR CONDITION OF ANY OF THE UNITS (OR ANY COMPONENT OF ANY UNIT), (II) THE MERCHANTABILITY OR FITNESS OF ANY OF THE UNITS FOR ANY PARTICULAR PURPOSE, (III) THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY OF THE UNITS (OR ANY COMPONENT OF ANY UNIT) OR CONFORMITY TO SPECIFICATIONS, OR (IV) THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, AND, ACCORDINGLY, LESSEE AGREES NOT TO EXERT ANY CLAIM AGAINST OWNER BASED THEREON. ALL UNITS LEASED TO LESSEE UNDER THIS AGREEMENT ARE LEASED ON AN "AS IS" BASIS. Owner shall have no liability or responsibility for any interruption of service, use, loss of business or anticipated profits or consequential damages or any special, incidental, punitive or consequential damages of any nature arising at any time out of this Agreement, and, accordingly, Lessee agrees not to exert any claim against Owner based thereon. Lessee confirms that it has selected the Units on the basis of its own judgment, and expressly disclaims reliance upon any statements, representations, or warranties made by Owner, except as expressly stated in this Agreement. Lessee acknowledges that Owner is not a manufacturer or vendor of the Units or any part of the Units.

7. USE, MAINTENANCE AND REPAIRS OF THE LOCOMOTIVES.

(a) Lessee shall use each of the Locomotives only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee agrees that it will not discriminate against any Unit (as compared to other similar equipment owned or leased by Lessee) with respect to its use, operation or maintenance in contemplation of the expiration or termination of this Lease.

(b) During the term of this Agreement, Lessee shall, at its own cost and expense, maintain each Unit (and the component parts of each Unit) in good repair and operating condition and in accordance with prudent industry practice and applicable manufacturer recommendations so that the Units will remain (i) in as good operating condition as when delivered (reasonable wear and tear excepted), and (ii) in compliance with applicable laws or regulations. Lessee shall perform all inspections of the Locomotives and maintain all records, logs and other materials with respect to each of the Locomotives as may be required to be maintained by the United States

Department of Transportation or any other governmental authority having jurisdiction over the Locomotives or the Lessee.

(c) Lessee agrees that, during the term of this Agreement, its use of the Locomotives shall comply with all applicable state and federal laws, rules, and regulations and to the extent any of the Units are used in interchange, with the applicable Interchange Rules of the AAR. Lessee shall not be subject to compliance with respect to any applicable law, rule or regulation which it is contesting in good faith by appropriate proceedings so long as the failure of compliance, in the reasonable opinion of Owner, will not result in the sale or forfeiture of any Unit, adversely affect Owner's title in any Unit or interfere with the due payment by Lessee of rent and other amounts payable under this Agreement. Lessee agrees that none of the Units shall be removed from the United States and Canada. Lessee agrees to indemnify and save harmless any Indemnitee (as defined in Section 14 below) from and against any liability or expense, including attorneys' fees, arising out of its use of the Units in violation of any applicable law, rule, or regulation.

(d) Nothing in this Agreement shall be construed as requiring Lessee or Owner to make modifications, alterations, additions or removals to or from the Locomotives in order to comply with applicable laws and regulations; provided that Lessee shall not be entitled to any abatement of rent whatsoever under this Agreement if Lessee is prohibited from operating any of the Locomotives as a result of the failure or unwillingness to make any such modifications, alterations, additions or removals. Notwithstanding the foregoing, if, during the lease term with respect to a Locomotive, Owner is required, pursuant to any applicable law, rule or regulation, to make (and in fact makes) any modification, alteration, addition or removal to the Locomotive, the purchase price of that Locomotive (for purposes of Section 27 below) shall be increased by the cost of any such modification, alteration, addition or removal. Nothing in this Agreement (including the fact that the Lessee or any sublessee may constitute a Class I carrier) shall be construed as obligating Owner, which is a Class II carrier, to make any modification, alteration, addition or removal that may be mandated for use of locomotives by a carrier that constitutes a Class I carrier.

(e) Except for replacements and repairs specified on attached *Schedule II* (which are the responsibility of Owner), Lessee, at its sole cost and expense, shall promptly replace any components or parts of a Locomotive that become worn-out, lost, destroyed, stolen or damaged beyond repair ("Replacement"). Lessee shall not modify a Locomotive or install equipment on a Locomotive (other than for purposes of Replacement) except (i) electronic speed recorders, electronic event recorders and devices, end of train devices, cab heaters, ditch lights, radios, microphones, antennas and related equipment installed on locomotives (together, "Excepted Equipment") or (ii) with the prior written consent of Owner. Lessee is not authorized to permit any mechanics' liens or materialmen's liens to arise or exist on any of the Units.

(f) All replacement parts installed or attached to any of the Locomotives and any additions made to the Units (other than Excepted Equipment installed by Lessee)

shall be considered accessions to the Units and title to such replacement parts or additions shall vest in Owner, effective with respect to each Unit upon termination of the lease of such Unit under this Agreement or, if earlier, effective with respect to all Units upon the occurrence of any Event of Default under this Agreement.

8. ASSIGNMENT OF MANUFACTURER'S OR SUPPLIER'S WARRANTIES.

As of the date of delivery of each Unit, Owner assigns to Lessee, for the term of the lease of the Unit under this Agreement, any rights Owner has (to the extent Owner may validly assign those rights) under all manufacturers' and suppliers' warranties and servicing obligations with respect to the Unit and its components. Owner appoints Lessee its attorney-in-fact to assert during such term any claims which Owner from time to time may have against any seller or manufacturer of the Unit under the warranties or servicing obligations assigned to Lessee. Lessee agrees to settle all claims with respect to the Units directly with the manufacturers or suppliers, as the case may be, and to give Owner prompt notice of any settlement, including the details of the settlement. Owner shall cooperate in the enforcement by Lessee of any warranties or servicing obligations or the prosecution of any claim to the extent necessary or appropriate, at Lessee's reasonable request and expense.

9. TAXES.

Lessee agrees to pay, prior to the penalty date, all local, state, federal or foreign (including, without limitation, any Canadian or provincial) taxes (other than United States federal, state or local taxes imposed on Owner's income or on any Secured Party's income) and other fees or assessments that may be imposed upon or with respect to the ownership, delivery, possession, use, rental or return to Owner of the Units, together with any applicable penalties, fines or interest (collectively, "Taxes"). Lessee is liable for these Taxes whether they are imposed on an Indemnitee, a Secured Party, the Lessee, the Units, this Agreement or any applicable schedule. Taxes which are applicable or levied with respect to a period prior to delivery of a Unit to Lessee shall be prorated between the Owner and Lessee. If Lessee is required by law or administrative practice to make any report or return with respect to any Taxes, Lessee shall promptly advise Owner in writing and shall cooperate with Owner to ensure that the reports are properly filed and accurately reflect Owner's interest in the Unit. Although Owner has no obligation to contest any Taxes, Lessee may do so provided that: (a) Lessee does so in its own name and at its own expense unless it is necessary to join Owner in the contest or bring the contest in Owner's name; (b) the contest does not and will not result in any lien attaching to any Unit or otherwise jeopardize Owner's rights to any Unit; and (c) Lessee indemnifies Owner (and any other Indemnitee) for all reasonable expenses (including legal fees and costs), liabilities and losses that Owner or such other Indemnitee incurs as a result of any contest.

10. RIGHT TO INSPECT.

During the term of this Agreement, the respective representatives of the Owner

and each of the Secured Parties may on reasonable advance notice to Lessee, during regular business hours, and at the expense of Owner or the applicable Secured Party, as the case may be, inspect any of the Locomotives or records maintained by Lessee relating to the Locomotives for the purpose of determining the condition of and maintenance of the Units in accordance with the provisions of this Agreement.

11. INSURANCE.

(a) During the term of this Agreement, Lessee shall procure or maintain in effect (i) comprehensive general liability insurance covering the operation and use of the Locomotives in the amount of \$10 million per occurrence for bodily injury and property damage combined; and (ii) all risk property insurance at full replacement cost.

(b) Such insurance policies shall (i) with respect to the comprehensive general liability coverage, name and insure the Owner and each of the Secured Parties as additional insureds, (ii) with respect to the property coverage, name the Owner and each of the Secured Parties as loss payees, as their respective interests appear, and (iii) provide that coverage shall not be reduced, materially changed or canceled without at least 30 days' prior written notice to Owner and each Secured Party.

(c) Evidence of the insurance coverage required by this Section shall be delivered to Owner prior to or on the lease commencement date. At the reasonable request of Owner or either of the Secured Parties, Lessee shall provide evidence of continued compliance with this Section during the term of this Agreement.

12. LOSS; CASUALTY VALUE.

(a) Lessee shall promptly notify Owner if any Locomotive shall be lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use from any cause whatsoever (any such occurrence referred to as a "Casualty Occurrence"). On the rent payment date next following the Casualty Occurrence, Lessee shall (i) pay to Owner any unpaid rent or other amount due with respect to the casualty Locomotive on or prior to that rent payment date, and (ii) either pay Owner the casualty value specified on *Schedule IV* attached to this Agreement or, by mutual agreement, replace the casualty Unit with a Locomotive with another unit of like model and condition, with the same accessories, and free and clear of all liens and encumbrances. Upon substitution of a locomotive by Lessee, title to the substitute unit shall immediately vest in Owner (and Lessee will provide Owner a bill of sale, in form reasonably satisfactory to Owner, to evidence such vesting of title), and the substitute unit shall immediately become subject to this Agreement and shall constitute a "Locomotive" or "Unit" for all purposes under this Agreement.

(b) Upon Lessee's payment of the casualty value or delivery of a substitute locomotive with respect to any casualty Unit, (i) the terms of this Agreement shall no longer apply to the casualty Locomotive, other than the obligations under Sections 9 and 14 and the indemnity obligation set forth in Section 7(c); and (ii) title to and

rights in the casualtyed Locomotive shall immediately vest in Lessee without any warranty, express or implied, from Owner, except that the casualtyed Unit shall be free and clear of all liens by, through or under Owner (and Owner shall provide Lessee with a Bill of Sale, in form reasonably satisfactory to Lessee, evidencing the conveyance of title to the casualtyed Unit to Lessee in accordance with this subsection); provided, however, that the Owner shall have the option, to be exercised within fifteen (15) days after the payment of the casualty value or the substitution of a locomotive by Lessee, to retain the casualtyed Locomotive upon payment to Lessee of the scrap or salvage value of the casualtyed Unit determined by mutual agreement or, failing to reach agreement, by the average of the bids on the scrap or salvage by three independent parties. Lessee shall furnish Owner with certificates or other evidence of compliance with the Section 6 as may be reasonably requested by Owner.

(c) In the event that a Locomotive is taken or requisitioned by condemnation or otherwise by any governmental entity for a period which shall exceed the remaining term of the lease under this Agreement with respect to the Locomotive, Owner shall relieve Lessee from rental payments for such Locomotive effective from the date the Locomotive is requisitioned or condemned and settle with such governmental entity upon appropriate consideration for such taking. Lessee shall immediately pay over to Owner any proceeds it may receive in consideration of any such taking.

13. RETURN OF UNITS.

(a) On termination of the lease of a Locomotive under this Agreement (other than a termination in accordance with Section 12 above), Lessee shall return the Locomotive at a point of interchange on Owner's lines and otherwise in accordance with this Section. Excepted Equipment furnished by Lessee may be removed by Lessee prior to return so long as removal will not damage such Unit. The Locomotives shall be returned clean and in good operating condition, with no FRA defects and in such condition that the Locomotive would be acceptable in every respect for immediate operation on, or sale or lease to, a Class I line-haul railroad (which is not then or prospectively a debtor in any bankruptcy, insolvency or reorganization proceeding). At the time of return, Owner and Lessee shall perform a joint inspection of each Unit to verify that the Unit is returned in the condition required by this Section.

(b) If, at the termination of the lease of a Locomotive under this Agreement, the Unit does not comply with the applicable conditions specified in subsection (a) above, Lessee shall either (i) correct the deficiencies at its expense within thirty (30) days of the inspection (and, during such period, the Locomotive shall be considered to remain in Lessee's possession, all risk of Loss with respect to the Locomotive shall continue to be borne by Lessee, and Lessee shall continue to insure the Locomotive in accordance with this Agreement), or (ii) notify Owner that it elects to have Owner correct the deficiencies at Lessee's expenses, in which case, Owner will assume responsibility for correcting the deficiencies and invoice the cost of correction to Lessee on completion.

(c) Lessee will permit Owner to store any of the Locomotives on its tracks for a period of not longer than ninety (90) days following termination of this Agreement. Following storage, Lessee, at its expense, shall return each such Unit as directed by Owner either (i) to a point of interchange on Owner's tracks specified by Owner or (ii) to a connecting carrier for further shipment specified by Owner. During this 90-day storage period, Lessee at its expense shall maintain and insure such Units in accordance with this Agreement. The risk of loss and damage to Units during storage and shipment shall remain with Lessee in accordance with the provisions of this Agreement. While in storage Lessee shall permit representatives of Owner and each of the Secured Parties to inspect the Units.

14. INDEMNIFICATION.

Lessee agrees to indemnify and hold harmless Owner and its successors and assigns (each an "Indemnatee") and, if requested by an Indemnatee, defend that Indemnatee from and against all damages, losses, liabilities, penalties, judgments, suits, actions or claims, arising out of or connected with Lessee's failure to perform its obligations under this Agreement or any injury or death of any persons or any damage to any property arising out of the actual or alleged use, possession, operation or transportation of any of the Locomotives, including reasonable costs and expenses (including, without limitation, reasonable legal fees and costs) in connection with the foregoing. Notwithstanding the foregoing, Lessee shall not be required to indemnify any Indemnatee against any damage, loss, liability, cost or expense resulting from any express repair obligations of Owner under this Agreement, the gross negligence or willful misconduct of Owner, or any claims against Owner under a theory of strict liability. The indemnity obligations under this Section shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the expiration or termination of this Agreement.

15. PROHIBITION AGAINST LIENS.

Except as otherwise provided in this Agreement, the Locomotives shall, for purposes of this Agreement, be considered to be in the sole possession, custody, and control of Lessee from the time of delivery to Lessee until returned to Owner; provided that Lessee shall not acquire any title or property interest or right to any Unit except as lessee under this Agreement or in accordance with Section 12 of this Agreement. Lessee shall keep each of the Locomotives (and all component parts of each of the Locomotives) free and clear of all liens, encumbrances and charges except for the interests of Owner and the Secured Parties.

16. FILINGS.

Prior to delivery and acceptance of the Locomotives under this Agreement, Lessee will cause this Lease to be duly recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and will furnish evidence of such filing to Owner and each of the Secured Parties. Prior to operating any of the

Locomotives in Canada, Lessee will comply with the filing and other requirements set forth in Section 17 below. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, record, deposit or register any and all amendments or supplements to this Agreement or other instruments or documents reasonably requested by Owner to protect Owner's title in and to the Units or to carry out the intention of this Agreement. Lessee will pay all costs and expenses incident to any such filing, recording, registering or depositing under this Section.

17. OPERATIONS IN CANADA.

Lessee shall be prohibited from operating any of the Locomotives in Canada unless, prior to any such operation, (i) Lessee has provided Owner and each of the Secured Parties with prior written notice of its intention to operate in Canada, and (ii) Lessee has provided Owner and each of the Secured Parties with evidence that this Lease, the Oxford Security Agreement (a copy of which will be furnished to Lessee upon its notification of intent to operate in Canada), and the Agent Security Agreements (a copy of which will be furnished to Lessee upon its notification of intent to operate in Canada) has been deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and notice of such deposit has been given in *The Canada Gazette* in accordance with Section 90 of the Railway Act of Canada. The cost of compliance with this Section (including the costs of any required deposit or publication) shall be borne solely by Lessee.

18. EVENTS OF DEFAULT.

An "Event of Default" means the occurrence of one or more of the following events:

- (a) a failure by Lessee to make any payment owing under this Agreement within ten (10) days after such payment is due and payable;
- (b) a default in the performance of any other material obligation of Lessee under this Agreement that continues for fifteen (15) days after written notice from Owner specifying the default and a demand for its remedy;
- (c) Lessee becomes insolvent or fails generally to pay its debts as they become due, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a custodian, trustee, or receiver for Lessee for the major part of its property;
- (d) a custodian, trustee, or receiver is appointed for Lessee or for the major part of its property and is not discharged within sixty (60) days after the appointment;
- (e) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed by or authorized by Lessee;

(f) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed against Lessee and is not dismissed or vacated within sixty (60) days; or

(g) Lessee voluntarily or involuntarily dissolves or is dissolved.

19. REMEDIES.

(a) Upon the occurrence and during the continuation of an Event of Default, Owner may exercise one or more of the following remedies:

(i) terminate the lease of Locomotives under this Agreement by written notice to Lessee, in which case Owner may enter the premises where the Units are located and take immediate possession of the Locomotives or require Lessee at its expense to return possession of the Units to Owner pursuant to Section 13 above, and thereafter Owner may either:

(x) sell the Units in a public or private sale and recover from Lessee the amount by which the casualty value for the Units exceeds the net proceeds of sale; or

(y) lease the Units to a third party and recover from Lessee the amount by which rent payable under this Agreement for the Units exceeds rent received under the third party lease;

(ii) declare all future payments of rent under this Agreement immediately due and payable, and upon payment of such amount and any amounts payable under clause (iv) below, the lease of Locomotives under this Agreement shall continue in effect for the remainder of its term without payment of further rent;

(iii) proceed by appropriate court action to enforce performance by Lessee of its obligations under this Agreement and to collect damages suffered as a result of the Event of Default; and

(iv) recover from Lessee all rent and other amounts accrued and unpaid under this Agreement and all of Owner's costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcement of this Agreement after the occurrence and during the continuation of an Event of Default.

(b) The remedies stated above are cumulative and are in addition to any other right or remedy available under this Agreement or under applicable law. The failure of Owner to exercise the rights granted under this Agreement upon the occurrence of any Event of Default shall not constitute a waiver of any such rights upon the continuation or recurrence of any such Event of Default or any similar event.

20. SUBLEASE AND ASSIGNMENT.

(a) Owner acknowledges that Lessee is leasing the Locomotives for the purpose of subleasing the Units to other railroads. Lessee shall not sublease the Locomotives or assign its rights under this Lease without the prior written consent of Owner, which consent shall not be unreasonably withheld; provided, however, that so long as (i) the sublessee shall be a Class I railroad and (ii) the sublease shall contain the terms set forth in subsection (b) below, Owner shall be deemed to have consented to such sublease. Notwithstanding the foregoing, Lessee shall be obligated to provide Owner and each Secured Party with written notice of any such sublease prior to the commencement of the sublease terms.

(b) Any sublease shall contain the following provisions: (i) an acknowledgment by the sublessee of the Secured Parties' respective security interests in and to the Locomotives and Owner's pledge of this Agreement to the Secured Parties; (ii) an obligation on the part of the sublessee to provide Owner and each of the Secured Party's with at least thirty (30) days prior notice of any change in the road numbers from those set forth on *Schedule I* to this Agreement; and (iii) an assignment of Lessee's obligations under this Agreement, including (without limitation) the obligations set forth in Sections 5, 7, 11 and 17 of this Agreement. Notwithstanding any sublease or assignment of this Agreement by Lessee, as between Owner and Lessee, Lessee will remain the primary obligor under this Agreement and shall not be relieved of any of its obligations under this Agreement.

21. REPORTS.

At the request of Owner during the term of this Agreement, Lessee shall promptly deliver to Owner any information regarding the Units reasonably requested by Owner.

22. REPRESENTATIONS.

(a) Lessee represents and warrants to Owner as follows:

- (i) Lessee is a validly organized and existing corporation, in good standing in its jurisdiction of incorporation.
- (ii) All necessary corporate action of Lessee required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized or obtained, and this Agreement constitutes the valid and binding obligation of Lessee, enforceable in accordance with its terms.
- (iii) The lease of the Units contemplated by this Agreement will not result in any default under or breach of Lessee's charter documents or bylaws or any agreement to which Lessee is a party or to which it is bound.

- (iv) There are no proceedings pending or threatened against Lessee that may materially and adversely affect Lessee's ability to enter into, or perform its obligations under, this Agreement.
- (v) Lessee has obtained all licenses, permits, approvals, authorizations or qualifications necessary for the conduct of its business and the execution, delivery and performance of this Agreement.
- (b) Owner represents and warrants to Lessee as follows:
 - (i) Owner is a validly organized and existing Delaware corporation, in good standing.
 - (ii) All necessary corporate action of Owner required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized or obtained, and this Agreement constitutes the valid and binding obligation of Owner, enforceable in accordance with its terms.
 - (iii) The lease of the Locomotives contemplated by this Agreement will not violate the provisions of, result in any default under or accelerate any obligation of Owner under any agreement, note, mortgage, lease or other instrument to which Owner is a party or by which Owner is bound.
 - (iv) The execution, delivery and performance by Owner of its obligations under this Agreement requires no authorization or approval of, or exemption by, any governmental, public or self-regulatory body or authority.
 - (v) There are no proceedings pending or threatened against Owner that may materially and adversely affect Owner's ability to enter into, or perform its obligations under, this Agreement.
 - (v) Owner has obtained all licenses, permits, approvals, authorizations or qualifications necessary for the conduct of its business and the execution, delivery and performance of this Agreement.

23. SURVIVAL OF REPRESENTATIONS.

All representations, warranties and agreements made by the parties in this Agreement shall survive the execution, delivery and consummation of this Agreement and any investigation made at any time by or on behalf of either party. All of Owner's rights, privileges and indemnities, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the termination of this Agreement shall survive such termination and be enforceable by Owner and any successors and assigns.

24. QUIET ENJOYMENT.

So long as Lessee complies with the terms and provisions of this Agreement and no Event of Default has occurred and is continuing, Lessee shall be entitled to the use and possession of the Locomotives according to the terms of this Agreement without interference by the Owner or any party claiming through the Owner.

25. EXPENSES.

Except as otherwise expressly provided in this Agreement, each party shall pay its own expenses in connection with this Agreement.

26. FURTHER ASSURANCES.

Lessee shall promptly execute and deliver to Owner or either of the Secured Parties such documents or instruments and take such further actions as Owner or the Secured Party, as the case may be, may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to protect the rights and remedies of Owner and the Secured Parties, as the case may be, under this Agreement.

27. PURCHASE OPTION.

So long as no Default or Event of Default has occurred and is continuing, Lessee shall have the right, upon written notice delivered to Owner not less than sixty (60) days prior to the expiration of the term of this Agreement, to purchase all (but not fewer than all) of the Locomotives then subject to this Agreement for a purchase price of \$100,000 per Locomotive (subject to any increase pursuant to Section 7(d) above). The purchase shall be effective as of the expiration of the term of this Agreement.

28. MISCELLANEOUS.

(a) This Agreement shall be construed under and in accordance with the laws of Illinois, including for the purpose of choice of law, as though all acts of performance or omission occurred in that state.

(b) The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.

(c) Any notice or other communication required or permitted by this Agreement shall be delivered personally or sent by United States registered or certified mail, postage prepaid, or by certified messenger service, or by facsimile (with telephonic confirmation) addressed as follows or to another address specified by a party on notice

to the other:

To Lessee: Electro Motive Division
General Motors Corporation
9301 West 55th Street; Dept. #785
La Grange, Illinois 60525
Attn: Lease Mgr. Locomotive Operation
Tel: (708) 387-6225
Fax: (708) 387-5864

To Owner: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
Attn: President
Tel: (216) 767-3401
Fax: (216) 767-4327

To Oxford: The Oxford Group, Inc.
6 West Hubbard Street
Suite 500
Chicago, Illinois 60610
Attn: President
Tel: (312) 527-2300
Fax: (312) 527-2023

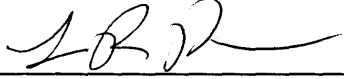
To Agent: Bank of America National Trust and Savings Association,
as Agent
Agency Management Services #5596
1455 Market Street, 12th Floor
San Francisco, California 94103
Tel: (415) 622-7011
Fax: (415) 622-4894

(d) The failure or delay of Owner to require Lessee's full compliance with the terms of this Agreement shall not be interpreted as a waiver of those terms or of Owner's right subsequently to insist on full compliance with those terms. If Lessee fails to perform any of its obligations under this Agreement, Owner may perform any act or make any payment which Owner considers reasonably necessary to the maintenance and preservation of the Locomotives and Owner's or Secured Parties' interests in the Units; provided that the performance of any act or payment by Owner shall not be considered a waiver of, or release of Lessee from, the obligation at issue. Owner shall be reimbursed by Lessee for any such payments or demands.

(e) This Agreement shall be binding upon and inure to the benefit of Owner and Lessee and their respective successors and assigns.


(f) This Agreement (including the Schedules and Exhibits which are attached to and constitute a part of this Agreement), as supplemented and amended from time to time, sets forth the entire agreement and understanding of Owner and Lessee with respect to the Locomotives and supersedes all other written or oral agreements relating to the subject matter of this Agreement. This Agreement may be amended, modified or terminated only by a written instrument signed by Owner and Lessee and consented to in writing by each of the Secured Parties.

**WHEELING & LAKE ERIE RAILWAY
COMPANY**

By: 

Its: President & CEO

**ELECTRO MOTIVE DIVISION OF
GENERAL MOTORS CORPORATION**

By: 

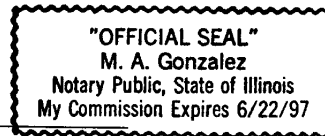
Its: ASSISTANT SECRETARY

State of Illinois)
) ss:
County of COOK)

On the 23 day of September, 1994, before me personally appeared KEITH J. Mc CANLESS, to me personally known, who, being by me duly sworn, says that he is the ASSISTANT SECRETARY of Electro Motive Division of General Motors Corporation ("EMD") and that the foregoing instrument was signed on behalf of EMD by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was EMD.

M. A. Gonzalez
Notary Public

Notary Seal:



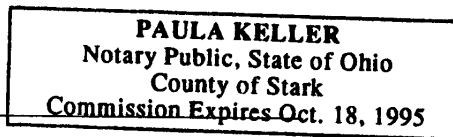
My commission expires: _____

State of Ohio)
) ss:
County of Stark)

On the 27 day of September, 1994, before me personally appeared Terry R. Parsons, to me personally known, who, being sworn, says that he is the President & CEO of the Wheeling & Lake Erie Railway Company ("Wheeling") and that the foregoing instrument was signed on behalf of Wheeling by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of Wheeling.

Paula Keller
Notary Public

Notary Seal:



My commission expires: _____

SCHEDULE I
LOCOMOTIVES

<u>Type</u>	<u>W&LE Road Number</u>	<u>Lessee's Road Number</u>	<u>Rent per Day</u>	<u>Delivery Date</u>
EMD SD45	WC 1701		\$200	9/30/94
EMD SD45	WC 1718		\$200	9/30/94
EMD SD45	WC 1724		\$200	9/30/94
EMD SD45	WC 1744		\$200	9/30/94
EMD SD45	WC 1745		\$200	9/30/94
EMD SD45	WC 1746		\$200	9/30/94
EMD SD45	WC 9093		\$200	9/30/94

SCHEDULE II

NEEDED REPAIRS AND REPLACEMENTS

<u>Locomotive</u>	<u>Needed Repair or Replacement</u>
WC 1744	Electrical ground relay to be repaired by Owner, at Owner's expense
WC 1746	Bent camshaft to be repaired or replaced by Owner, at Owner's expense
WC 1745	At Lessee's election, either (i) all wheels to be replaced by Owner, at Owner's expense, with non-EMD wheels with at least half their useful life remaining ("Used Wheels"), or (ii) all wheels to be replaced by Owner with new EMD wheels provided by EMD; provided that Owner shall reimburse EMD for a portion of the cost of the new wheels in an amount equal to the fair market value of the Used Wheels.

General Terms and Conditions

The parties will cooperate with one another to facilitate the prompt and efficient performance of the repairs and replacements described above.

With respect to the repairs or replacements to be performed on WC 1744 and WC 1746, to the extent feasible, Lessee agrees to provide Owner with EMD parts at a discounted purchase price. However, if Owner can obtain any needed parts with non-EMD parts at a more economical price, Owner is under no obligation to use the EMD parts.

SCHEDULE III

INSPECTIONS

<u>Locomotive</u>	<u>Inspection Date</u>	<u>Inspection Location</u>
WC 1701	9/30	Brewster
WC 1718	9/30	Brewster
WC 1724	9/30	Brewster
WC 1744	9/30	Brewster
WC 1745	9/30	Brewster
WC 1746	9/30	Brewster
WC 9093	9/30	Brewster

SCHEDULE IV
CASUALTY VALUES

<u>Casualty Date</u>	<u>Casualty Value</u>
Month 1	\$160,000
Month 2	\$155,000
Month 3	\$150,000
Month 4	\$145,000
Month 5	\$140,000
Month 6	\$135,000
Month 7	\$130,000
Month 8	\$125,000
Month 9	\$120,000
Month 10	\$115,000
Month 11	\$110,000
Month 12	\$105,000

EXHIBIT A
FORM OF CERTIFICATE OF ACCEPTANCE

To: Wheeling & Lake Erie Railway Company ("Owner")

I, a duly appointed and authorized representative of ELECTRO MOTIVE DIVISION OF GENERAL MOTORS CORPORATION (the "Lessee") under the Locomotive Lease dated as of September 15, 1994 between the Owner and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Locomotives:

TYPE OF EQUIPMENT: EMD SD45 locomotive(s)

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that each of the foregoing Locomotives are in good operating order, with no FRA defects, and in condition sufficient for operation and use by a Class I line-haul railroad (which is not now or prospectively a debtor in any bankruptcy, insolvency or reorganization proceeding).

Dated: _____

Inspector and Authorized
Representative and Lessee